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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 MICHAEL FOLEY,

8 Plaintiff(s),

Case No. 2:17-CV-1024 JCM (VCF)

ORDER

9 v.

10 SYLVIA TEUTON, et al.,

11 Defendant(s).
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13 Presently before the court is defendant Sylvia Teuton's motion to dismiss.¹ (ECF No. 10).
14 Plaintiff Michael Foley filed a response (ECF No. 22), to which Teuton replied (ECF No. 27).

15 Also before the court is defendants Kenneth Bourne and James Harris's motion to dismiss.
16 (ECF No. 19).² Plaintiff has not filed a response, and the time for doing so has since passed.

17 Also before the court is defendants Clark County and Steven Wolfson's motion to dismiss.³
18 (ECF No. 24). Plaintiff filed a response (ECF No. 37), to which Clark County and Wolfson replied
19 (ECF No. 39).

20 Also before the court is defendant Steven Grierson's motion to dismiss. (ECF No. 30).
21 Plaintiff filed a response. (ECF No. 34). Defendant has not filed a reply, and the time for doing
22 so has since passed.

23 Also before the court is defendant Joseph Lombardo's motion to dismiss. (ECF No. 45).
24 Plaintiff filed two responses, (ECF Nos. 49, 51), to which Lombardo replied (ECF Nos. 50, 52).
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27 ¹ Defendant Joseph Lombardo joined this motion. (ECF No. 42).

28 ² Defendant Joseph Lombardo joined this motion. (ECF No. 43).

³ Defendant Joseph Lombardo joined this motion. (ECF No. 44).

1 Also before the court are two motions for entry of clerk's default. (ECF Nos. 14, 15).

2 **I. Facts**

3 The instant dispute arises out of plaintiff's failure to pay child support and a resulting civil
4 contempt bench warrant executed by defendants.

5 On April 9, 2015, defendants Harris and Bourne contacted plaintiff by telephone,
6 pretending to be interested in buying a car that plaintiff was selling. (ECF No. 1). Plaintiff agreed
7 to meet defendants. *Id.* At the meeting, defendants handcuffed plaintiff and demanded that he pay
8 an outstanding child support obligation to Patricia Foley. *Id.* Plaintiff claimed that he did not have
9 the money. *Id.* Therefore, Harris and Bourne transported plaintiff to the Clark County Detention
10 Center ("CCDC"). *Id.*

11 On April 13, 2015, plaintiff appeared in front of hearing master Teuton. *Id.* Plaintiff
12 alleges that Teuton ordered plaintiff to serve 25 days of confinement for failure to pay court
13 ordered child support. *Id.*

14 Plaintiff's *pro se* civil rights complaint contains three causes of action: (1) "The right to be
15 free from arrest and to freedom from bodily restraint and guaranteed by the 4th and 14th
16 amendments, as well as Article I, Section 14 of the Nevada Constitution, and NRS 22.140;" (2)
17 "The right to be free from false imprisonment and false judicial process, as well as the right to an
18 attorney in a de facto criminal action that is falsely labeled as a 'civil action,' but in reality is a
19 kangaroo court designed to falsely imprison;" and (3) "The right to be free from injury, threats,
20 intimidation and oppression by the government: 18 U.S.C. 241, and the freedom to enjoy the rights
21 and privileges secured by the Constitutions of the State of Nevada, the Bill of Rights and other
22 laws." *Id.*

23 **II. Legal Standard**

24 A court may dismiss a complaint for "failure to state a claim upon which relief can be
25 granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain
26 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell*
27 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed
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1 factual allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
2 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

3 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550
4 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
5 matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (citation
6 omitted).

7 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
8 when considering motions to dismiss. First, the court must accept as true all well-pled factual
9 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
10 *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by conclusory
11 statements, do not suffice. *Id.* at 678.

12 Second, the court must consider whether the factual allegations in the complaint allege a
13 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff’s complaint
14 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the
15 alleged misconduct. *Id.* at 678.

16 Where the complaint does not permit the court to infer more than the mere possibility of
17 misconduct, the complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.*
18 (internal quotation marks omitted). When the allegations in a complaint have not crossed the line
19 from conceivable to plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at 570.

20 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,
21 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

22 First, to be entitled to the presumption of truth, allegations in a complaint or
23 counterclaim may not simply recite the elements of a cause of action, but must
24 contain sufficient allegations of underlying facts to give fair notice and to enable
25 the opposing party to defend itself effectively. Second, the factual allegations that
are taken as true must plausibly suggest an entitlement to relief, such that it is not
unfair to require the opposing party to be subjected to the expense of discovery and
continued litigation.

26 *Id.*

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1 **III. Discussion**

2 *a. Teuton's motion to dismiss*

3 Teuton argues that plaintiff's complaint should be dismissed because (1) the Eleventh
4 Amendment bars plaintiff's official capacity causes of action; (2) quasi-judicial immunity protects
5 Teuton for her acts as a hearing master; (3) "qualified immunity protects [Teuton] from civil
6 liability because ordering confinement for unpaid child support services does not violate clearly
7 established law;" (4) qualified immunity applies as there is no Sixth Amendment right to counsel
8 in civil enforcement proceedings; (5) plaintiff's argument regarding debtors prison does not govern
9 a hearing master's power to enforce child support; and (6) plaintiff was not falsely imprisoned, as
10 he admits that he did not pay child support.⁴ (ECF No. 10).

11 "Judges and those performing judge-like functions are absolutely immune from damage
12 liability for acts performed in their official capacities." *Ashelman v. Pope*, 793 F.2d 1072, 1075
13 (9th Cir. 1986); *see also Butz v. Economou*, 438 U.S. 478 (1978). This absolute immunity extends
14 to claims arising under 42 U.S.C. § 1983. *Forrester v. White*, 484 U.S. 219, 224 (1988). The
15 Supreme Court of Nevada has adopted this rule for all persons "who are an integral part of the
16 judicial process." *Duff v. Lewis*, 114 Nev. 564, 568, 958 P.2d 82, 85 (1998).

17 Here, defendant Teuton is a hearing master who presides over cases to establish and enforce
18 child support payments. (ECF No. 27). She "takes testimony, makes findings of fact, conclusions
19 of law, and issues recommendations for enforcement of court orders." *Id.*

20 Plaintiff's sole legal argument against dismissal is that Teuton is not entitled to quasi-
21 judicial immunity because she is not a district court judge. This is a distinction without a
22 difference, as hearing masters in child support cases perform acts that are integral to the judicial
23 process. Further, Teuton's order amounted to enforcement of a child support obligation that
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26 ⁴ Plaintiff's response failed to address three of Teuton's arguments in favor of dismissal
27 (Eleventh Amendment; Sixth Amendment; and state law false imprisonment arguments). Pursuant
28 to Local Rule 7-2(d), a failure to file points and authorities in response to a motion to dismiss
 constitutes a consent to granting of the motion. However, as plaintiff is a *pro se* litigant, and
 defendant's motion presents otherwise meritorious grounds for dismissal, the court will consider
 the merits of Teuton's motion.

1 plaintiff does not dispute was outstanding at the time of the hearing. Therefore, Teuton is protected
2 by quasi-judicial immunity. *See Duff*, 114 Nev. at 568.

3 As the court holds that defendant Teuton's actions are immune from suit on the basis of
4 quasi-judicial immunity, the court need not address defendant's alternative arguments for
5 dismissal.

6 *b. Bourne and Harris's motion to dismiss*

7 Defendants Bourne and Harris filed a motion to dismiss, arguing *inter alia* that plaintiff
8 fails to state a cognizable § 1983 claim because neither Harris nor Bourne deprived defendant of
9 any rights secured by the Constitution or federal law. (ECF No. 19).

10 Local Rule 7-2(d) states that "[t]he failure of an opposing party to file points and authorities
11 in response to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney's
12 fees, constitutes a consent to the granting of the motion."

13 "Failure to follow a district court's local rules is a proper ground for dismissal." *Ghazali*
14 *v. Moran*, 46 F.3d 52. In *Ghazali*, defendants filed a motion to dismiss. *Id.* at 53. Plaintiff, who
15 represented himself *pro se*, failed to oppose defendant's motion. *Id.* at 54. The court granted
16 defendant's motion based on plaintiff's failure to file an opposition. *Id.* at 53. The Ninth Circuit
17 upheld the decision of the district court. *Id.* at 54. "[P]ro se litigants are bound by the rules of
18 procedure. [Plaintiff] did not follow them, and his case was properly dismissed." *Id.*

19 "Before dismissing an action [for failure to follow local rules], the district court is required
20 to weigh several factors: '(1) the public's interest in expeditious resolution of litigation; (2) the
21 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
22 favoring disposition of cases of their merits; and (5) the availability of less drastic sanctions.'" *Id.*
23 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).

24 Here, plaintiff's failure to file a response to Bourne and Harris's motion constitutes consent
25 to granting the motion. LR 7-2(d). Further, the *Ghazali* factors favor dismissal. Defendants
26 Bourne and Harris acted in their capacity as investigators for the family support division of the
27 Clark County District Attorney's office when they arrested plaintiff for an outstanding civil
28 contempt bench warrant. Thereafter, plaintiff was afforded a hearing regarding his failure to pay

1 child support. Therefore, as plaintiff's complaint does not state a colorable claim for relief against
2 defendants Bourne and Harris, dismissal is proper.

3 *c. Clark County and Wolfson's motion to dismiss*

4 *i. Plaintiff's claims against Wolfson*

5 The Ninth Circuit has recognized that enforcement of child support orders by a district
6 attorney is an integral part of the judicial process and is a quasi-judicial function, thereby
7 warranting the protection of absolute prosecutorial immunity. *Meyers v. Contra Costa County*
8 *Dept. of Soc. Servs.*, 812 F.2d 1154, 1156-59 (9th Cir. 1987), *cert. denied*, 484 U.S. 829, 108 S.Ct.
9 98 (1987). The Ninth Circuit has also held that quasi-judicial immunity protects persons carrying
10 out state court orders from liability in civil rights actions. *Coverdell v. Dep't of Soc. And Health*
11 *Servs.*, 834 F.2d 758, 764 (9th Cir. 1987).

12 Here, plaintiff complains of actions taken against him after a magistrate issued a civil
13 contempt warrant because he failed to appear at a hearing regarding a child support obligation.
14 Defendant Wolfson's actions, taken through attorneys and staff in his office, in an attempt to
15 collect child support owed by plaintiff, are part of the judicial process. *See Meyers*, 812 F.2d at
16 1156-59. Defendant Wolfson is entitled to absolute prosecutorial immunity for such actions. *See*
17 *id.* Therefore, plaintiff's complaint fails to state a claim upon which relief can be granted against
18 Wolfson.⁵ *See Twombly*, 550 U.S. at 570.

19 *ii. Plaintiff's claims against Clark County*

20 "[A] municipality cannot be held liable under § 1983 on a *respondeat superior* theory."
21 *Monell v. Dep't of Social Svcs.*, 436 U.S. 658, 691 (1978). Here, plaintiff's theory of liability as
22 to Clark County is that it "employs and pays most of these defendants and provides them material
23 support knowing they will violate the Plaintiff's civil rights." (ECF No. 1). As this theory of
24 liability rests on the applicability of *respondeat superior*, and Clark County cannot be held liable
25 based on *respondeat superior*, plaintiff's complaint fails to state a claim upon which relief can be
26 granted against Clark County. *See Monell*, 43 U.S. at 691.

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28 ⁵ Further, plaintiff has not made any allegations that Wolfson was acting outside the course
and scope of his duties as Clark County district attorney. Therefore, plaintiff's complaint fails to
state a claim against Wolfson in his individual capacity.

1 *d. Grierson's motion to dismiss*

2 Defendant Grierson asserts, *inter alia*, that plaintiff's complaint fails to state a claim upon
3 which relief can be granted against Grierson because the complaint does not allege that he
4 personally participated in or directed any of the alleged violations related to plaintiff's civil
5 contempt proceedings. (ECF No. 30).

6 A supervisor is not liable under § 1983 for a subordinate's constitutional violations unless
7 "the supervisor participated in or directed the violations, or knew of the violations and failed to act
8 to prevent them." *Maxwell v. County of San Diego*, 708 F.3d 1075, 1086 (9th Cir. 2013) (quoting
9 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)).

10 Here, plaintiff premises Grierson's liability on his role as court administrator, and the
11 complaint does not make any allegation that Grierson participated in or directed unlawful conduct.
12 Therefore, plaintiff's complaint fails to state a claim upon which relief can be granted against
13 Grierson. *See Maxwell*, 708 F.3d at 1086.

14 *e. Lombardo's motion to dismiss*

15 Defendant Lombardo filed a motion to dismiss, arguing that plaintiff's complaint fails to
16 state a claim upon which relief can be granted.⁶ (ECF No. 45). Lombardo argues, *inter alia*, that
17 plaintiff has not adequately pleaded allegations of the deprivation of any right guaranteed by the
18 Constitution or a federal statute. *Id.*

19 The first inquiry in any § 1983 suit is whether a plaintiff has been deprived of a
20 right secured by the Constitution or created by federal statute. *Crumpton v. Gates*, 947 F.2d 1418,
21 1420 (9th Cir. 1991); *see Albright v. Oliver*, 510 U.S. 266, 271 (1994) ("section 1983 is not itself
22 a source of substantive rights, but merely provides a method for vindicating federal
23 rights elsewhere conferred."). Once a jailer is presented with an arrestee by an arresting agency,
24 the jailer has no independent duty to investigate the sufficiency of the underlying arrest and
25 whether probable cause existed at the time. *See Rivera v. County of Los Angeles*, 745 F.3d 384

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27 ⁶ Counsel also filed the motion on behalf of the Las Vegas Metropolitan Police Department
28 ("LVMPD"). (ECF No. 45). Counsel filed a certificate of interested parties, stating that the
LVMPD has an interest in the outcome of this case. However, as the LVMPD is not a party to this
lawsuit, the court will not consider arguments raised by or related to the LVMPD.

1 (citing *Lumberman Mut. Cas. Co. v. Rhodes*, 403 F.2d 2, 7 (10th Cir. 1968)). Rather, the jailhouse
2 is charged with having to safekeep the arrestee and to present him or her before a judge for a
3 prompt judicial determination of probable cause. *See id.*; *see also Baker*, 443 U.S. at 145. A jailer,
4 unlike a prosecutor, arresting officer, or judge, does not “wield the authority to secure a suspect’s
5 release.” *Tatum v. Moody*, 768 F.3d 806, 818 (9th Cir. 2014).

6 Plaintiff’s theory of liability as to Lombardo is mainly premised on the concept of
7 respondeat superior. As the court has explained above, respondeat superior is not a cognizable
8 theory of liability in the § 1983 context. *See Maxwell*, 708 F.3d at 1086.

9 In addition to his respondeat superior allegations, plaintiff claims Lombardo ignored a
10 letter from plaintiff which “insisted” Lombardo follow NRS 22.140 and his “deliberate
11 indifference” to this letter amounted to a constitutional violation. Plaintiff asserts that NRS 22.140
12 “forbids” Lombardo from holding him in jail on a civil bench warrant. (ECF No. 49 at 3.)
13 However, the statute contains an exception: an officer “shall not confine a person arrested upon
14 the warrant in a prison . . . except so far as may be necessary to secure his or personal attendance.”
15 Nev. Rev. Stat. § 22.140. The exception applies here, as LVMPD held plaintiff in jail pending the
16 civil contempt hearing. Because the detention here did not violate NRS 22.140, Lombardo was
17 not “deliberately indifferent” to the demands in plaintiff’s letter.

18 Finally, Lombardo notes that, apart from the letter exchange detailed above, plaintiff’s
19 complaint does not allege that defendant Lombardo personally participated in any of the conduct
20 surrounding defendant’s arrest or detention. Therefore, plaintiff’s complaint fails to state a claim
21 upon which relief can be granted against Lombardo. *See Maxwell*, 708 F.3d at 1086; Nev. Rev.
22 Stat. § 22.140.

23 *f. Plaintiff’s motions for entry of clerk’s default*

24 As the court holds that plaintiff’s complaint fails to state a claim upon which relief can be
25 granted against defendants Bourne and Harris, the court will deny plaintiff’s motions for entry of
26 clerk’s default as to Bourne and Harris.

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1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant Teuton's
4 motion to dismiss (ECF No. 10) be, and the same hereby is, GRANTED.

5 IT IS FURTHER ORDERED that defendants Bourne and Harris's motion to dismiss (ECF
6 No. 19) be, and the same hereby is, GRANTED.

7 IT IS FURTHER ORDERED that defendants Clark County and Wolfson's motion to
8 dismiss (ECF No. 24) be, and the same hereby is, GRANTED.

9 IT IS FURTHER ORDERED that defendant Grierson's motion to dismiss (ECF No. 30)
10 be, and the same hereby is, GRANTED.

11 IT IS FURTHER ORDERED that defendant Lombardo's motion to dismiss (ECF No. 45)
12 be, and the same hereby is, GRANTED.

13 IT IS FURTHER ORDERED that plaintiff's motion for entry of clerk's default as to
14 Kenneth Bourne (ECF No. 14) be, and the same hereby is, DENIED.

15 IT IS FURTHER ORDERED that plaintiff's motion for entry of clerk's default as to James
16 Harris (ECF No. 15) be, and the same hereby is, DENIED.

17 IT IS FURTHER ORDERED that plaintiff's claims against all defendants (except Patricia
18 Foley and the Clark County Detention Center⁷) be, and the same hereby are, DISMISSED.

19 DATED June 21, 2018.

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21 UNITED STATES DISTRICT JUDGE
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28 ⁷ Although defendant Lombardo's motion to dismiss references LVMPD's role as operator
of the Clark County Detention Center ("CCDC"), no counsel has entered an appearance on behalf
of CCDC or filed any documents in this litigation on its behalf.